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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

- - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

April 15, 2015

3:03 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Telephone Status Conference, on the Record, Regarding Document
Filed in Reference to Claim Number 5263

Transcribed by: David Rutt
eScribers, LLC
700 West 192nd Street, Suite #607
New York, NY 10040
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for ResCap Borrower's Trust
250 West 55th Street
New York, NY 10019

BY: JORDAN A. WISHNEW, ESQ. (TELEPHONICALLY)
JESSICA ARETT, ESQ. (TELEPHONICALLY)
NORMAN S. ROSENBAUM, ESQ. (TELEPHONICALLY)

CONSUMER LITIGATION ASSOCIATES, P.C.

Attorneys for Mr. Campos Carranza and the Class
763 J. Clyde Morris Blvd
Suite 1A
Newport News, VA 23601

BY: SUSAN M. ROTKIS, ESQ. (TELEPHONICALLY)

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KELLY & CRANDALL, PLC

Attorneys for Mr. Campos Carranza and the Class

4084 University Drive #202a

Fairfax, VA 22030

BY: KRISTI CAHOON KELLY, ESQ. (TELEPHONICALLY)

DAHIYA LAW GROUP, LLC

Attorneys for Mr. Campos Carranza and the Class

75 Maiden Lane

Suite 506

New York, NY 10038

BY: KARAMVIR DAHIYA, ESQ. (TELEPHONICALLY)

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right, this is Judge Glenn. We're on
3 the record, Residential Capital 12-12020. I've scheduled this
4 conference in connection with the objection to the claim of
5 Campos-Carranza, proof of claim number 5263. The Court is in
6 receipt of the April 6, 2015 letter from Susan Rotkis. Can
7 everybody make their appearance, please? Who's appearing
8 for --

9 MS. ROTKIS: Good afternoon, Your Honor --

10 UNIDENTIFIED SPEAKER: Good afternoon, Judge --

11 MS. ROTKIS: -- this is Susan M. Rotkis joining from
12 Newport News, Virginia on behalf of Inner Campos-Carranza and
13 the putative class.

14 THE COURT: Okay, who -- anybody else is appearing for
15 Campos Carranza?

16 MR. DAHIYA: Karamvir Dahiya, good afternoon, Judge.

17 THE COURT: Who is this?

18 MR. DAHIYA: I'm the proposed local counsel for Campos
19 Carranza --

20 THE COURT: Yes --

21 MR. DAHIYA: -- in New York, Your Honor.

22 THE COURT: Could I have --

23 MR. DAHIYA: Karamvir Dahiya.

24 THE COURT: Could I have your name? I'm sorry, I
25 can't hear you. What is your name?

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1 MR. DAHIYA: Karamvir -- Karamvir Dahiya, Judge.

2 THE COURT: Okay.

3 MR. WISHNEW: Good afternoon, Your Honor. Jordan
4 Wishnew and Jessica Arett of Morrison & Foerster for the ResCap
5 Borrower Claims Trust.

6 THE COURT: Okay. So I reviewed the letter from Ms.
7 Rutkis, and it raised a number of questions in my mind. And so
8 tell me what -- Ms. Rutkis, tell me what the Campos-Carranza
9 claim asserts.

10 MS. ROTKIS: Your Honor, prior to GMAC's filing of
11 bankruptcy, on behalf of Mr. Campos Carranza, we filed a
12 lawsuit in the Eastern District of Virginia with three claims:
13 breach of contract, breach of the implied covenant of good
14 faith and fair dealing, and for declaratory judgment. Shortly
15 thereafter, GMAC filed bankruptcy, but that part of the case
16 was stayed.

17 We alerted the court that we would be -- and counsel
18 for GMAC that we intended to file a class action on behalf of a
19 class of individuals against GMAC, but at that point, the case
20 was stayed. There were other things that happened in that case
21 that caused it to be stayed for several years, an unusual event
22 in the Eastern District of Virginia. It was consolidated with
23 many other cases, and then ultimately transferred to a
24 different division and a different judge, and so that case is
25 still ongoing.

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1 THE COURT: May I ask you this, did --

2 MS. ROTKIS: Meantime --

3 THE COURT: Let me stop you and ask you some
4 questions. Did you file -- how many defendants in the case as
5 filed?

6 MS. ROTKIS: In the original case, as filed, there
7 were five defendants.

8 THE COURT: And how many --

9 MS. ROTKIS: GMAC --

10 THE COURT: Yes. Who else?

11 MS. ROTKIS: GMAC; Freddie Mac; Shapiro Brown & Alt, a
12 foreclosure mill; Professional Foreclosure Corporation, which
13 was the foreclosure trustee associated with the foreclosure
14 mill; and Helmand Investments, the purchaser of the property in
15 foreclosure.

16 THE COURT: And it was filed as an individual action,
17 not as a class action?

18 MS. ROTKIS: That's correct, Your Honor.

19 THE COURT: All right. And tell me about the proof of
20 claim you filed in this case.

21 MS. ROTKIS: Well, at the time we received the proof
22 of claim, we knew that we had class action claims. Although
23 they had not yet been filed, we had the amended complaint ready
24 to go. And so in abundant caution, we filed a class proof of
25 claim on behalf of Mr. Campos-Carranza and a putative class.

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1 THE COURT: And what action, if any, have you done to
2 seek certification of a class claim?

3 MS. ROTKIS: We have not taken any action, Judge.

4 THE COURT: In your letter -- let me find the specific
5 portion -- you say on the second page, "We intend to seek
6 certification of a class in the Eastern District of Virginia,
7 where the claims arose." How is it that you -- you do
8 understand that you cannot proceed against GMAC in the Eastern
9 District of Virginia, I assume, don't you? You know that,
10 don't you?

11 MS. ROTKIS: Without relief from the stay, the
12 bankruptcy stay, I do understand that, Judge.

13 THE COURT: So why -- you didn't -- your letter didn't
14 identify the pending action, didn't indicate whether -- you've
15 now told me it's not filed as a class action, and the automatic
16 stay prevents you from proceeding with that action. You've
17 taken no action in this court to certify a class proof of
18 claim. And I don't understand, why is it that you think you
19 need an extension of time? When did the Trust file its
20 objection?

21 MR. WISHNEW: February --

22 MS. ROTKIS: February --

23 MR. WISHNEW: -- 18th, Your Honor.

24 THE COURT: Say again, Mr. Wishnew?

25 MR. WISHNEW: February 18th. We originally had the

1 matter noticed for March 31st, with an objection deadline of
2 March 11th, and at Ms. Rotkis' request, as she mentions in her
3 letter, we did provide a further extension of time to, I
4 believe, earlier -- I think the middle of last week.

5 THE COURT: And Ms. Rotkis, what is the -- just
6 focusing solely on the Campos-Carranza claim as an individual
7 claim, what discovery is it you believe you need in support of
8 your claim?

9 MS. ROTKIS: Well, GMAC has made certain
10 representations as proof of fact in their objection. We have
11 not been able to engage in any discovery. They're directly
12 controverted by the claim that we did file, by the lawsuit that
13 we did file, but it's on the record, there are facts at issue
14 that would give rise to the defendant's actions -- I'm sorry,
15 the debtor's actions in the allegations of breach of the
16 implied covenant of good faith and fair dealing, whether GMAC
17 breached the contract, and whether the -- Mr. Campos-Carranza
18 is entitled to declaratory judgment.

19 THE COURT: I'm going to ask my question one more
20 time, and I expect a direct answer to it. What discovery do
21 you wish to take from the debtors? You haven't told me that.
22 I'm asking you very --

23 MS. ROTKIS: I would seek --

24 THE COURT: -- specifically.

25 MS. ROTKIS: I would seek production of the entire

1 file with respect to Mr. Campos-Carranza, and, at a minimum, to
2 take the deposition of the declarant in this case.

3 THE COURT: All right, Mr. Wishnew?

4 MR. WISHNEW: Yes, Your Honor.

5 THE COURT: You've opposed a further extension, right?
6 Why is that?

7 MR. WISHNEW: I'm sorry, Your Honor?

8 THE COURT: You oppose a further extension of time in
9 connection with Campos-Carranza, the claim objection, as I
10 understand it. Of course, I only have Ms. Rotkis' letter.
11 What is your position with the request she's made in her
12 letter?

13 MR. WISHNEW: Well, I think, as Your Honor points out,
14 with regards to the first full paragraph on page 2, what most
15 concerns us was the statement, "We intend to seek certification
16 of a class in the Eastern District of Virginia, where the
17 claims arose." Given, as Your Honor mentioned, the automatic
18 stay, as well as the injunction in place as part of the
19 confirmed plan, we think that's a nonstarter. We believe that
20 the objection is only as to Inner Campos-Carranza, and should
21 not even -- any sort of putative class treatment should not
22 even be entertained, so we just want to make sure that, to the
23 extent that if the plan objection goes forward, it is only
24 addressing the individual claim, and not a class claim.

25 THE COURT: Well, what is the -- tell me what the

1 Trust's theory for expunging the Campos-Carranza claim is.

2 MR. WISHNEW: The theory of expunging the claim, Your
3 Honor, simply is the measure of damages here, Your Honor. What
4 we're talking about is if there was a breach of contract, the
5 measure of damages that we believe to be appropriate would be
6 any loss of equity in the property, and to the best of our
7 knowledge, there was no equity in the property. And so, based
8 on our research, we've not seen any case law to suggest an
9 alternative measure of damages, and so, in that regards, it's
10 our belief Mr. or Ms. Inner Campos-Carranza is not entitled to
11 an asserted five-million-dollar claim.

12 THE COURT: Well --

13 MR. WISHNEW: If anything, it's a fraction of that,
14 based upon a loan amount that was originally 237,000 dollars.

15 THE COURT: But let me ask you this: that doesn't
16 lead to expungement of a claim. That may lead to -- does the
17 claim fail to state a claim for relief? Let's put aside what
18 the measure of damages would be if it does state a claim for
19 relief.

20 MR. WISHNEW: Well, it's our position, Your Honor,
21 that the elements of a fraud have not been made out here, and
22 concerning a knowing and intentional false misrepresentation of
23 facts with intent to mislead --

24 THE COURT: Does --

25 MR. WISHNEW: -- even though we don't believe that --

1 THE COURT: Does the claim state a claim for relief
2 for breach of contract or breach of the good -- covenant of
3 good faith and fair dealing? Ms. Rotkis identified those two
4 as theories included within the claim.

5 MR. WISHNEW: Well, with regard to breach of contract,
6 there may be an argument concerning breach of contract, but
7 there's no separate cause of action for breach of a
8 covenant -- implied covenant of good faith and fair dealing.

9 THE COURT: I'm not sure there has to be. That would
10 ordinarily come within a contract claim. Do you agree that the
11 proof of claim states a claim for relief for breach of
12 contract?

13 MR. WISHNEW: I'm sorry, Your Honor, I'm just looking
14 at our pleadings once again. There could be a claim for breach
15 of contract, Your Honor, yes.

16 THE COURT: Ms. Rotkis, do you plead a fraud claim?

17 MS. ROTKIS: Your Honor, we did not plead a -- we did
18 not plead a fraud claim in the original action that was filed.
19 That was part of our amended claim. We think that we do have a
20 fraud claim. We know that we have a vital breach of the
21 implied covenant of good faith and fair dealing claim, contrary
22 to what Mr. Wishnew's represented. We have -- it's well
23 settled in the Commonwealth of Virginia in the Eastern District
24 of Virginia that a breach of the implied covenant of good faith
25 and fair dealing exists and that the facts of this case we

1 closely modeled our complaint of on other successful
2 complaints, and there's a declaratory judgment action, as well.

3 GMAC has no present right to foreclose, which means
4 that the sale is voidable or void, and so we have claims for
5 equitable relief. In Virginia, it's well settled that in an
6 action for declaratory judgment or where equitable relief
7 is -- that the claimant is entitled to equitable relief, the
8 value of the claim is the value of the REM, not the equity, and
9 then there are other actual damages.

10 THE COURT: Let me ask this question, let me ask
11 slightly differently. In either the proof of claim or the
12 complaint that's on file in Virginia, did you plead a claim for
13 fraud?

14 MS. ROTKIS: No, Judge.

15 THE COURT: Okay. So the two claims that are raised
16 by your proof of claim are breach of contract and breach of the
17 covenant of good faith and fair dealing, am I correct?

18 MS. ROTKIS: And the declaratory judgment count, as
19 well, Judge.

20 THE COURT: Yes, but declaratory judgment doesn't
21 exist in the ether. You have to have alleged some wrong, and
22 the wrong you're alleging is breach of contract or breach
23 of -- or breach of covenant of good faith and fair dealing, am
24 I correct?

25 MS. ROTKIS: Yes, Judge.

1 THE COURT: So tell me, Ms. -- I understand that you
2 indicated in your letter that you had an illness. When will
3 you be prepared to file an opposition to the objection to the
4 claim?

5 MS. ROTKIS: I request another twenty-one days, Your
6 Honor.

7 THE COURT: Am I correct that -- well, tell me,
8 what -- did you go through motion practice in Virginia before
9 the bankruptcy filing?

10 MS. ROTKIS: There was an initial motion practice;
11 however, in this particular case, this case was consolidated
12 with other cases with the same allegations. In this particular
13 case, Inner Campos-Carranza, the entire action was stayed and
14 referred to a mediator for a very long period of time before we
15 even had to respond to a motion to dismiss. And in fact, GMAC
16 had not filed the motion to dismiss; it was the foreclosure
17 trustee.

18 THE COURT: Okay. Mr. Wishnew, did you try to reach
19 an agreement with Ms. Rotkis about a date for her to respond to
20 the objection? An extension?

21 MR. WISHNEW: Beyond the -- beyond the extension
22 previously given -- oh, I'm sorry, Your Honor. In response to
23 this letter?

24 THE COURT: Yes.

25 MR. WISHNEW: No, I did not reach out to Ms. Rotkis in

1 response to this letter.

2 THE COURT: So look, she says in her letter that she
3 had requested additional time to respond, to which you agreed,
4 and then she says that she became ill and required emergency
5 treatment and subsequent medical treatment, and I'm very -- I
6 certainly respect -- where a lawyer has had a serious illness
7 and they've needed more time to respond, I've generally granted
8 it. If that was all that was in this letter, you probably
9 wouldn't have heard from me with an order. It was the stuff
10 about moving to certify a class action when you can't have a
11 class action in a federal or state court against GMAC. That's
12 why we're on the phone today.

13 MS. ROTKIS: This is Susie Rotkis. I appreciate that,
14 Judge, and with your permission, I would capitulate to Your
15 Honor's advice and guidance, and if it's not a full-on ruling,
16 it means that to me. And I don't know if I can amend the proof
17 of claim on the phone --

18 THE COURT: You can't. Let me --

19 MS. ROTKIS: -- but I would --

20 THE COURT: Let me just -- let me just tell you that
21 you can go read the fairly lengthy docket in ResCap, the number
22 of claims objections and opinions on claims objections. At
23 this late date, I'm not ruling, but I'm just telling you that
24 lawyers and pro ses have been very unsuccessful in amending
25 claims to assert new theories of liability against the Trust.

1 I mean, we're -- this plan became effective December 17, 2013.
2 And it's awfully late in the day for you to be telling me now
3 you want to amend the claim to add something new or even to
4 certify a class proof of claim when there's been no action to
5 do so since the claim was filed.

6 So what I'm going to deal with -- you'll do whatever
7 you think you need to do to protect your client's interests,
8 but -- so I will -- may I ask you this? I don't mean to pry
9 about your health, Ms. Rotkis. Are you now back at work on a
10 regular basis?

11 MS. ROTKIS: Thank you, Judge. I know it's always a
12 sensitive topic when someone alerts you to a health issue, and
13 I am back at work. I'm not at full steam.

14 THE COURT: Okay.

15 MS. ROTKIS: I'm still under treatment --

16 THE COURT: No --

17 MS. ROTKIS: -- by my physician.

18 THE COURT: Okay, don't go --

19 MS. ROTKIS: It's not that serious.

20 THE COURT: Okay.

21 MS. ROTKIS: It's not that serious, but it's still
22 affecting my work, and I was --

23 THE COURT: Okay.

24 MS. ROTKIS: -- very interested in associated local
25 counsel in New York, especially bankruptcy counsel. In

1 nineteen years of practicing law, it's my first year ever
2 appearing in your court or in a bankruptcy court anywhere, so I
3 needed that expertise.

4 THE COURT: All right. Mr. Wishnew, I'm going to
5 grant Ms. Rotkis twenty-one days from today to file a response
6 to the objection.

7 Mr. Dahiya, if you plan to appear, you better file a
8 notice of appearance promptly.

9 MR. DAHIYA: Yes, Your Honor.

10 THE COURT: Okay? And I'm not going to grant any
11 further extensions beyond this twenty-one day extension.

12 Mr. Wishnew, speak with your opposing counsel about a
13 date -- you know, one of the omnibus hearing dates.
14 Obviously -- I say obviously -- you would undoubtedly, as you
15 have in the past, want to file a reply, so build that in and
16 see if you can agree on an omnibus hearing date when this will
17 be heard.

18 MR. WISHNEW: Very good, Your Honor.

19 THE COURT: And you can put that -- if you can't agree
20 on the dates, contact my chambers and we'll have another
21 telephone call.

22 MR. WISHNEW: I'm sure --

23 THE COURT: I'm sure you will.

24 MR. WISHNEW: I'm sure we can get agreed on a date.

25 THE COURT: Okay.

1 MR. WISHNEW: And Your Honor, just for Ms. Rotkis'
2 benefit, to the extent she wants to appear at the first
3 hearing, she can appear telephonically.

4 THE COURT: Well, let me just say, my -- whenever
5 lawyers appear intending to make the principal substantive
6 argument in support of or opposition to objection, I want them
7 in my courtroom. For any scheduling matters or matters where
8 they're not making the principal argument, I'm more than happy
9 to have them appear by telephone.

10 Ms. Rotkis, my general practice is if lawyers maintain
11 their principal office outside the New York metropolitan area,
12 they can appear by telephone, and they regularly do. It's
13 hard, where there's a substantive argument on a motion, not to
14 have the lawyers in the courtroom. I don't know whether Mr.
15 Dahiya or yourself is going to make the argument beyond -- but
16 talk to Mr. Wishnew, work out the schedule.

17 Mr. Wishnew, put it in a letter to the Court so I know
18 what the schedule is. I would -- the other thing I would --

19 MR. WISHNEW: Very good, Judge.

20 THE COURT: The other thing I would say, Mr. Wishnew,
21 if I ask you some questions whether the proof of claim states a
22 claim for breach of contract or implied covenant of good faith
23 and fair dealing, without regard to the measure of damages that
24 might apply, you certainly ought to discuss with Ms.
25 Rotkis -- because, Mr. Wishnew, you know this issue has arisen

1 recently in some other matters where the dispute really is
2 about the measure of damages, and the result is -- has, in some
3 cases, been an opinion or order sustaining in part and
4 overruling in part the Trust's objection.

5 MR. WISHNEW: Yes, Your Honor.

6 THE COURT: Spare me the unnecessary -- an unnecessary
7 hearing to do that. If you believe you have a good faith basis
8 for essentially seeking to expunge the claim as a matter of
9 law, well, fine, we'll go forward with the hearing. If you
10 don't --

11 MR. WISHNEW: Yeah.

12 THE COURT: -- let's see if we can speed it up and see
13 if we can agree on -- see if you can agree with how it should
14 proceed. If it states a claim for breach of contract, breach
15 of covenant of good faith and fair dealing, and there are
16 disputed issues of fact, cooperate with Ms. Rotkis about a
17 making -- about making the loan file, for example, the loan
18 file available. Let's see if we can move this along.

19 Why don't you do this? Send me a status letter within
20 the next fourteen days that sets out what the agreed schedule
21 is, how you're going to proc -- how the parties have agreed to
22 proceed. If you go forward with the objection, that's fine,
23 but don't make me spend -- let's not spin wheels about it,
24 okay?

25 MR. WISHNEW: Understood, Your Honor.

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1 THE COURT: All right. Let's leave it at that, all
2 right?

3 Mr. Dahiya, if you're going to --

4 MR. WISHNEW: Very good.

5 THE COURT: -- appear, though -- if you're going to
6 appear, get your notice of appearance filed.

7 MR. DAHIYA: Yes, Your Honor.

8 THE COURT: Okay. All right. Any questions from
9 anybody?

10 Thank you very much.

11 MS. ROTKIS: Not from the plaintiff, Judge.

12 MR. WISHNEW: Thank you.

13 THE COURT: All right. Thank you very much.

14 MR. WISHNEW: Thank you.

15 MS. ROTKIS: Thank you, Judge.

16 MR. DAHIYA: Thank you, Judge.

17 THE COURT: All right.

18 MR. DAHIYA: Good day.

19 (Whereupon these proceedings were concluded at 3:30 PM)

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I N D E X

RULINGS

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The Court grants Ms. Rotkis twenty-one	17	5
days to file a response to the objection		

C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



DAVID RUTT

AAERT Certified Electronic Transcriber CET**D 635

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: April 16, 2015